IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1266 of 1989

to

FIRST APPEAL No 1273 of 1989

and

FIRST APPEAL No 1275 of 1989

to

FIRST APPEAL No 1290 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

SECOND ADDITIONAL SPECIAL LANDACQUISITION OFFICER

Versus

CHUNILAL GANGARAM

Appearance: In all the First Appeals :

MR MUKESH A PATEL, A.G.P. for Appellants

MR PV NANAVATI for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE
Date of decision: 23/07/98

C.A.V. JUDGEMENT

1. These appeals have been directed by the appellants, the Second Additional Special Land Acquisition Officer and the Executive Engineer, against the common award and judgment of the 2nd Joint District Judge, Ahmedabad (Rural) at Mirzapur in land acquisition cases pertaining to the lands of village Nani Ratnai belonging to the claimants-respondents which were acquired for the construction of Suraj-Dabhsas-Odhav-Solgam-Mandal Drain dated 21st January, 1989.

2. The Executive Engineer, Irrigation Division, Jilla Panchayat, Ahmedabad proposed by his letter dated 17th March, 1981, addressed to the Collector, Ahmedabad to acquire the lands detailed therein of the village Nani Ratnai, Tal. Viramgam for the construction of Suraj Dabhsas-Odhav-Solgam-Mandal Drain and the Collector, Ahmedabad authorised the Second Additional Special Land Acquisition Officer by his letter dated 11-5-1981 to make necessary procedures for acquisition of the said lands. The claimants-respondents are the owners of the lands which were the subject matter of the aforesaid letter.

3. Notification under section 4 of the Land Acquisition Act, 1894 was published in the Government of Gujarat Gazette on 10-2-1983 for the acquisition of the lands for the public purpose as aforesaid. Notification under section 6 of the said Act was published in the Government of Gujarat Gazette on 29-9-1983. The necessary notices under section 9 of the Act were given to the claimants-respondents for their putting appearance for the purpose of determining the compensation. The respondents-claimants have claimed the compensation for compulsory acquisition of their lands at the rate of Rs.8000/- to 10000/- per bigha. The Land Acquisition Officer passed the award on 7-3-1984 and awarded the compensation to the respondents-claimants for compulsory acquisition of their lands at the rate of Rs.62/- per Are. The respondents-claimants were not satisfied with the aforesaid award of compensation awarded to them by the Land Acquisition Officer and prayed to the said authority for making references of the matter under section 18 of the Act, 1894 to the Civil Court. Their prayer has been accepted and the references have been made to the District Court, Ahmedabad Rural, which ultimately came to be decided by the 2nd Joint District Judge, Ahmedabad (Rural) at Mirzapur on 21-1-1989.

4. The Reference Court under the impugned award granted the additional compensation to the respondents-claimants at the rate of Rs.4-38 per sq. mt. So far as the owners of the lands bearing Survey No.108/2 and 108/4,it was ordered that they will get 5% less amount of the compensation as their lands were of new tenure or restricted tenure. Further the Reference Court has awarded to the respondents-claimants 12% more on the market value of the acquired lands for the period from 10-2-1983 to 7-3-1984 under section 23 (1-A) of the Land Acquisition Act, 1894. Hence, these appeals before this Court by the appellants.

5. Learned counsel for the appellants contended that the learned Reference Court has committed serious error in awarding compensation to the appellants relying on its previous decisions vide judgments Ex.43 and 44. Those previous decisions of the Reference Court were though in respect of the same project, the subject matters of those references were lands of different village which were situated at a distant place and were not of same fertility. It has next been contended that the Reference Court has committed serious illegality in awarding 12% more on the market value of the acquired lands to the respondents-claimants for the period from 10-2-1983 to 7-3-1984 under section 23 (1-A) of the Act, 1894.

6. On the other hand, the counsel for the respondents contended that earlier award of the acquisition of the lands more so when those lands were acquired for the same project and were situated within reasonable proximity of distance and were of same fertility are material and relevant and Reference Court has not committed any error in awarding the compensation relying on those judgments. Replying to the second contention, the learned counsel for the respondents contended that this contention is also devoid of any substance as the provisions of section 23 (1-A) of the Act, 1894 as inserted by Land Acquisition (Amendment) Act, 1984 are applicable to the case of the respondents. He made reference to section 30 of the Land Acquisition (Amendment) Act, 1984 and contended that the provisions of sub-section (1-A) of section 23 of the Principal Act, as inserted by clause (a) of section 15 of the Act, 1984 shall apply, and shall be deemed to have applied also to, and in relation to every proceeding for the acquisition of any land under the principal Act pending on the 30th day of April, 1982, the date of introduction of the Land Acquisition (Amendment) Bill, 1982 in the House of the People, in which no award has been made by the Collector

before that date. In the present case, the proceedings for the acquisition of the land of the claimants have been started much after 30th day of April, 1982. In support of this contention, learned counsel for the respondents placed reliance on the Division Bench decision of this Court in the case of Samjuba Merambhai vs. Second Spl. L.A. Officer reported in 1998 (2) GLR 1280.

7. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

8. The Division Bench of this Court in the case of Special Land Acquisition Officer vs. Shantaben Chhitubhai's Widow & Ors. given in civil application No.7876/97 decided on 10th September, 1997 held as under:

> In this group of seven Civil Applications for condonation of delay of 210 days under Section 5 of the Limitation Act, 1961, for filing appeals against the common judgment and awards under the Land Acquisition Act, 1894, common questions are involved as we have incidentally seen and gone into the merits of each award at the stage of admission with the help of the record and copies supplied by the learned Assistant Government Pleader, Mr. Mukesh Patel. After having dispassionately seen the record and hearing learned A.G.P., Mr. Patel, and considering the petty and smallness of amount of difference between the assessment of market value made by the Land Acquisition Officer under Section 11 and the awards made on reference by the District Court under Section 26 of the Act, we deem it expedient and appropriate to not to interfere with the seven applications wherein delay is sought to be condoned in filing 7 appeals against the amount in each matter, less than Rs.15000/- , following our recent decision in First Appeal No.4877 of 1996 and allied matters recorded on 8-9-1997, and the ratio propounded in State of Himachal Pradesh vs. Amar Singh - AIR 1983 H.P. 70.
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> 2. No useful purpose will be served even by condoning delay as prayed for in each of the application as the amount involved, in each of this group of 7 intended appeals, is quite small, insignificant and petty. Even if we were to condone the delay as prayed for after issuance of

the notice, the result would have been the same in respect of appeals. The issuance of notice, however, even in this group of Civil Applications for condonation of delay, in all probabilities taking the realistic view in the matter, opponents original-claimants will be put to spend in order to defend even the Civil Applications which may be highly disproportionate to the amount involved in the group of appeals. It is in this set of circumstances and bearing in mind the aforesaid proposition of law, we are of the clear opinion that the Civil Applications, for condonation of delay, deserve to be rejected at the inception upon cursory and prima-facie examination of the merits of the appeals and the involvement of the amount, which is obviously petty and insignificant.

3. In view of the aforesaid facts and circumstances and the observations, this group of seven Civil Applications shall stand rejected.

9. So the ratio of the Division Bench of this Court in the aforesaid case is that where the amount of additional compensation is less than Rs.15000/- normally this Court should not interfere with the award. If we go by the quantum of amount of additional compensation awarded in these matters then I find that in Appeal Nos. 1267, 1268, 1270, 1273, 1275, 1276, 1278 to 1280, 1282, 1283, 1285 to 1288 and 1290 of 1989 the amount of additional compensation is less than Rs.15000/-. However, in the appeals No. 1266, 1269, 1271, 1272, 1277, 1281, 1284 and 1289 of 1989 the amount of additional compensation awarded is more than Rs.15000/-. So the former set of appeals otherwise also have no merits but as in latter appeals the amount of additional compensation is more than Rs.15000/- the matter has to be considered on merits by this Court. It is true that the claimants made an endeavour to give out exorbitant income from their land but in the present case the evidence produced by the claimants regarding their yearly yield per bigha has not been accepted by the Reference Court. The Reference Court has on the basis of the evidence produced and considering the situation, fertility and nature of the acquired lands has inferred that the claimants might be earning Rs.0.25ps. per sq. mt. per year. However, the Reference Court has not relied on the yield method in this case for the purpose of determining just, adequate and reasonable compensation to be awarded to the respondents-claimants for the acquisition of their lands. For the purpose of determining the just, adequate

and reasonable compensation to be awarded to the respondents-claimants, the learned Reference Court has placed reliance on the previous judgments Ex.43 and 44. Ex. 43 is previous judgment of Reference Court in respect of group of land acquisition case No.437/84 and others and the lands acquired under that judgment were the lands of village Moti Ratnai. Notification in that case under section 4 of the Act, 1894 was published in the Government Gazette on 3-2-1983 and those lands were also acquired for the construction of Suraj-Dabhsar-Odhav-Solgam-Mandal Drain. The previous judgment Ex.44 reveals that the subject matter of those reference were the lands of village Odhav which was also acquired for the very same purpose. There notification under section 4 was published in the Government Gazette on 17th March, 1983. From these judgments, it comes out that the market value of the acquired lands therein was fixed at Rs.5/- per sq. mt.. Notification under section 4 in these three cases, that is, the cases subject matter of the two judgments earlier and this case, are almost of the same period. It has come on the record in the evidence that there is a common Gram Panchayat of village Nani Ratnai and Moti Ratnai and the sim of both these villages is adjoining. Much emphasis has been laid by the learned counsel for the appellants that the village Odhav is at a distance of 3 kms. from village Nani Ratnai and as such this judgment Ex.44 cannot be taken to be relevant for the purpose of determining the just, adequate and reasonable compensation to be paid to the claimants-respondents in this case. However, the learned counsel for the appellants has not disputed that the village Nani Ratnai and Moti Ratnai are having common Gram Panchayat. Secondly, it is also not denied that the simada of villages Nani Ratnai and Moti Ratnai is common. Village Odhav may be at a distance of 3 kms. from village Nani Ratnai but the learned counsel for the appellants is unable to show to this Court what is the distance in between the villages Nani Ratnai and Moti Ratnai. Ex.43 is the previous judgment pertaining to the acquisition of the lands of village Moti Ratnai and when the villages Moti Ratnai and Nani Ratnai are having common Gram Panchayat and common simada, the learned Reference Court has not committed any error in relying on that decision to determine the compensation to be awarded in this case to the claimants-respondents. In that case, admittedly, the compensation was awarded at the rate of Rs.5/- per sq. mt. and relying on that decision the Reference Court in this case also awarded compensation at the rate of Rs.5/per sq. mt. and to this decision which is based on the previous judgment of the lands of village Moti Ratnai, no exception can be taken. It is no more

res integra that the decision of the Reference Court given in earlier case is a relevant and material piece of evidence for the purpose of determining compensation to be awarded in other cases. Taking into consideration these facts, it is a case where the Reference Court has not committed any error in relying on its own previous decision given in connection with the lands of nearby village and which were acquired for the same project.

10. So far as the second point is concerned, I find sufficient merits in the contention raised by the learned counsel for the respondents. The acquisition proceedings in this case have been started much after 30th day of April, 1982 and as such the provisions of section 23 (1-A) of the Act, 1894, as amended by the Act, 1984 are clearly applicable to the present case. The Division Bench decision is clear on this issue.

11. In the result, all these appeals fails and the same are dismissed. Interim relief, if any, granted by this Court stands vacated. No order as to costs.

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